

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN MCGEE,
Plaintiff,

No. 1:09-cv-461

-v-

HONORABLE PAUL L. MALONEY

UNITED STATES OF AMERICA, ET AL.
Defendants.

ORDER DENYING MOTION FOR WITHDRAWAL OF REFERENCE

Plaintiff Steven McGee, a federal prisoner acting pro se, initiated this action by filing a motion to withdraw referral of an adversary proceeding from the bankruptcy court.

Plaintiff requests the court issue an order withdrawing the referral of a suit from the Bankruptcy Court to the District Court pursuant to 28 U.S.C. §§ 157(b)(5) and (d). Plaintiff asserts his civil adversary complaint contains “clearly stated personal injury tort allegations against the named Defendants under the Federal Tort Claims Act, the Bivens remedy, and State-law tort Causes of Action.” (Mot. at 2.) Under subsection (b)(5), a district court “shall order the personal injury tort and wrongful death claims in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose.” 28 U.S.C. § 157(b)(5). The phrase “personal injury tort” is not defined in either Title 28 or Title 11 and courts have disagreed as to what constitutes a “personal injury tort claim.” *In re Arnold*, 407 B.R. 849, 851-52 (M.D.N.C. 2009).

On the record before this court, it is not possible to determine whether Plaintiff’s civil adversary complaint contains personal injury claims. The civil adversary complaint has not been included in the record. Accordingly, Plaintiff’s motion for withdrawal of reference is **DENIED WITHOUT PREJUDICE**.

Within 28 days of the entry of this order, Plaintiff shall file a renewed motion, included any necessary proofs, or this action will be closed.

IT IS SO ORDERED.

Date: May 18, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief, United States District Judge